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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 724

RAYMOND R. WADE, et al., d/b/a CADILLAC TOOL & DIE COMPANY and WAYNE DIE & ENGINEERING COMPANY,

Appellants,

vs.

HENRY L. STIMSON and ROBERT P. PATTERSON,

Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

JOHN W. PEURIFOY,
PAUL R. BRAUN,
Counsel for Appellants.

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HENRY L. STIMSON AND ROBERT P. PATTERSON,
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

Now comes Raymond E. Wade, et al., d/b/a Cadillac Tool & Die Company and Wayne Die & Engineering Company, appellants herein, and concurrently with the presentation of their petition for the allowance of an appeal from the District Court of the United States for the District of Columbia by a specially constituted Three Judge Court under Title 28, Section 380a of the United States Code to the Supreme Court of the United States, herewith and hereby present this statement disclosing the basis upon which the Supreme Court of the United States has juris-

diction upon such appeal to review the order and decree from which said appeal is taken.

The above named appellants in support of the jurisdiction of the Supreme Court of the United States to review on appeal the above entitled cause and the order of the District Court granting the defendants' Motion for Summary Judgment and, denying the plaintiffs' prayer for a preliminary injunction, respectfully represent:

I. Statute Sustaining Jurisdiction

The statutory provision believed to sustain jurisdiction is Title 28, Section 380a of the United States Code. *Injunction not to issue except on the order of a Court of three judges; appeal; speedy disposition* and particularly the following provisions thereof:

> "An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty (30) days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case."
>
> "Appeals under this Section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character."

II. United States Statutes, the Enforcement, Operation and Execution of Which Is Sought to Be Enjoined

The United States Statutes, the enforcement, operation, and execution of which are sought to be enjoined are:

> (1) Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942, 56 U. S. Statutes at Large 245.

(2) Section 801 of the Revenue Act of 1942 (Public 753, 77th Congress), approved October 21, 1942, 56 U. S. Statutes at Large 982.

(3) Section 403 (e) (1) and (2) of Section 701 (b) of the Revenue Act of 1943 (Public 235, 78th Congress), enacted February 25, 1944, 58 U. S. Statutes at Large 78.

The pertinent provisions or résumés of pertinent provisions of the aforesaid statutes are herewith set forth:

(1) *Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942.*

(a) The Act of April 28, 1942, was applicable to three departments: the War Department, the Navy Department, and the Maritime Commission.

The Act defined "renegotiate" and "renegotiation":

"include the refixing by the Secretary of the department of the contract price."

This Act does not include or contain any definition of "subcontract"—it provides:

"* * * 'contract' includes a subcontract and the term 'contractor' includes a subcontractor."

(b) The Secretary of each Department is authorized and directed to insert in any contract for an amount in excess of $100,000 hereafter made by such Department * * * (3) a provision requiring the contractor to insert in each subcontract for an amount in excess of $100,000 made by him under such contract (a) a provision for the renegotiation by such Secretary and the subcontractor of the contract price of the subcontract at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty, (b) a provision for the retention by the United States or the repayment

to the United States of any amount of the contract price of the subcontract which is found as a result of such renegotiation, to represent excessive profits and (c) a provision for relieving the contractor from any liability to the subcontractor on account of any amount so retained by or repaid to the United States."

The defendants purported to act under subsection (c) of the Statute:

"The Secretary of each Department is authorized and directed, whenever in his opinion excessive profits have been realized, or are likely to be realized, from any contract with such Department or from any subcontract thereunder, (1) to require the contractor or subcontractor to renegotiate the contract price, (2) to withhold from the contractor or subcontractor any amount of the contract price which is found as a result of such renegotiation to represent excessive profits, and (3) in case any amount of the contract price found as a result of such renegotiation to represent excessive profits shall have been paid to the contractor or subcontractor, to recover such amount from such contractor or subcontractor."

The Statute further provides in subsection (c) for setting up an indebtedness:

"Such contractor or subcontractor shall be deemed to be indebted to the United States for any amount which such Secretary is authorized to recover from such contractor or subcontractor under this subsection, and such Secretary may bring actions in the appropriate courts of the United States to recover such amount on behalf of the United States."

The Statute was expressly made applicable by subsection (c):

"To all contracts and subcontracts hereafter made and to all contracts and subcontracts heretofore made,

whether or not such contracts or subcontracts contain a renegotiation or recapture clause, provided that final payment pursuant to such contract or subcontract has not been made prior to the date of enactment of this Act."

The Statute provides for the shifting of the discretion and of the power of the Secretary in the following language:

"(f) The authority and discretion herein conferred upon the Secretary of each Department, in accordance with regulations prescribed by the President for the protection of the interests of the Government, may be delegated, in whole or in part, by him to such individuals or agencies in such Department as he may designate, and he may authorize such individuals or agencies to make further delegations of such authority and discretion."

(2) *Section 801 of the Revenue Act of 1942 (Public 753, 77th Congress), aproved October 21, 1942.*

This enactment proceeded to amend subsections (a), (b), and (c) of Section 403 of the Sixth Supplemental National Defense Appropriation Act. It was further provided:

"(d) The amendments made by this section shall be effective as of April 28, 1942."

(a) The Act was made applicable to four departments: War Department, Navy Department, Treasury Department, and the Maritime Commission.

The Act defined "renegotiate" and "renegotiation":

"include the refixing by the Secretary of the Department of the contract price."

The Act defined "excessive profits":

"any amount of a contract or subcontract price which is found as a result of renegotiation to represent excessive profits."

The Act defined "subcontract":

> "any purchase order or agreement to perform all or any part of the work, or to make or furnish any article, required for the performance of another contract or subcontract. The term 'article' includes any material, part, assembly, machinery, equipment, or other personal property."

The scope of contracts covered was set forth in subsection (b):

> "Subject to subsection (i), the Secretary of each Department is authorized and directed to insert in any contract for an amount in excess of $100,000 hereafter made by such Department * * * (3) a provision requiring the contractor to insert in each subcontract for an amount in excess of $100,000 made by him under such contract (i) a provision for the renegotiation by such Secretary and the subcontractor of the contract price of the subcontract at a period or periods when, in the judgment of the Secretary, the profits can be determined with reasonable certainty, (ii) a provision for the retention by the contractor for the United States of the amount of any reduction in the contract price of any subcontract pursuant to its renegotiation hereunder, or for the repayment by the subcontractor to the United States of any excessive profits from such subcontract paid to him and not eliminated through reductions in the contract price or otherwise as the Secretary may direct, and (iii) a provision for relieving the contractor from any liability to the subcontractor on account of any amount so retained by the contractor or repaid by the subcontractor to the United States, and (iv) in the discretion of the Secretary, a provision requiring any subcontractor to insert in any subcontract made by him under such subcontract, provisions corresponding to those of subparagraphs (3) and (4) of this subsection (b); * * *"

> "(4) A provision for the retention by the United States from amounts otherwise due the contractor, or

for repayment by him to the United States, as the Secretary may direct, of the amount of any reduction in the contract price of any subcontract under such contract, which the contractor is directed, pursuant to clause (3) of this subsection, to withhold from payments otherwise due the subcontractor and actually unpaid at the time the contractor receives such direction."

The Secretary was given discretion to fix a period or periods when or within which renegotiation shall be had and is set forth in subsection (b) (4):

"The provision for the renegotiation of the contract price in the discretion of the Secretary, (i) may fix the period or periods when or within which renegotiation shall be had; and (ii) if in the opinion of the Secretary the provisions of the contract or subcontract are otherwise adequate to prevent excessive profits, may provide that renegotiation shall apply only to a portion of the contract or subcontract or shall not apply to performance during a specified period or periods and may also provide that the contract price in effect during any such period or periods shall not be subject to renegotiation."

The defendants purported to act under subsection (c) (1):

"Whenever, in the opinion of the Secretary of a Department, the profits realized or likely to be realized from any contract with such Department, or from any subcontract thereunder whether or not made by the contractor, may be excessive, the Secretary is authorized and directed to require the contractor or subcontractor to renegotiate the contract price. When the contractor or subcontractor holds two or more contracts or subcontracts the Secretary in his discretion, may renegotiate to eliminate excessive profits on some or all of such contracts and subcontracts as a group without separately renegotiating the contract price of each contract or subcontract."

The Secretary was authorized and directed to eliminate any excessive profits under such contract or subcontract in subsection (c) (2):

> "* * * (ii) by withholding, from amounts otherwise due to the contractor or subcontractor, any amount of such excessive profits; or (iii) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to the subcontractor, any amount of such excessive profits under the subcontract; or (iv) by recovery from the contractor or subcontractor, through repayment, credit or suit, of any amount of such excessive profits actually paid to him; or (v) by any combination of these methods, as the Secretary deems desirable."

The Secretary was instructed by virtue of subsection (c) (3) to recognize the properly applicable exclusions and deductions allowed under Chapters 1 and 2E of the Internal Revenue Code. He was also instructed:

> "* * * In determining the amount of any excessive profits to be eliminated hereunder the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code."

The power of the Secretary upon renegotiation is stated in subsection (c) (4):

> "Upon renegotiation pursuant to this section, the Secretary may make such final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section, as the Secretary deems desirable. * * * Such agreements may cover such past and future period or periods, may apply to such contract or contracts of the contractor or subcontractor, and may contain such terms and conditions, as the Secretary deems advisable. * * *"

The statute was expressly made applicable in subsection (c) (6):

> "• • • to all contracts and subcontracts hereafter made and to all contracts and subcontracts heretofore made, whether or not such contracts or subcontracts contain a renegotiation or recapture clause. • • •"

An exception was made to subsection (c) (6) by providing:

> "• • • The aggregate sales by the contractor or subcontractor, and by all persons under the control of or controlling or under common control with the contractor or subcontractor under contracts with the Departments and subcontracts thereunder do not exceed, or in the opinion of the Secretary concerned will not exceed, $100,000 for the fiscal year of such contractor or subcontractor."

A provision, subsection (f), pertained to the delegation of discretion:

> "Subject to any regulations which the President may prescribe for the protection of the interests of the Government, the authority and discretion herein conferred upon the Secretary of each Department may be delegated in whole or in part by him to such individuals or agencies as he may designate in his Department, or in any other Department with the consent of the Secretary of that Department, and he may authorize such individuals or agencies to make further delegations of such authority and discretion."

(3) *Section 701 (b) of the Revenue Act of 1943 (Public 235, 78th Congress), enacted February 25, 1944.*

Section 403 (c) (1):

> "Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may, within ninety days (not count-

ing Sunday or a legal holiday in the District of Columbia as the last day) after the mailing of the notice of such order under subsection (c) (1), file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. The Court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. For the purpose of this subsection the court shall have the same powers and duties, insofar as applicable, in respect of the contractor, the subcontractor, the Board and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115 (a), 1116, 1117 (a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board or Secretary, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board or Department available for that purpose, and in the case of any other witnesses, shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this subsection shall not operate to stay the execution of the order of the Board under subsection (c) (2)."

Section 403 (e) (2):

"Any contractor or subcontractor (excluding a subcontractor described in subsection (a) (5) (B) aggrieved by a determination of the Secretary made prior to the date of the enactment of the Revenue Act of 1943, with respect to a fiscal year ending before July 1, 1943, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of the enactment of the Revenue Act of 1943, file a petition with The Tax Court of the United States for a redetermination thereof, and any such contractor or subcontractor aggrieved by a determination of the Secretary made on or after the date of the enactment of the Revenue Act of 1943, with respect to any such fiscal year, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the date of such determination, file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have the same jurisdiction, powers, and duties, and the proceeding shall be subject to the same provisions, as in the case of a petition filed with the Court under paragraph (1), except that the amendments made to this section by the Revenue Act of 1943 which are not made applicable as of April 28, 1942, or to fiscal years ending before July 1, 1943, shall not apply."

III. Date of Decree and Application for Appeal

The order of the aforesaid Three Judge Statutory District Court granting the defendants' Motion for Summary Judgment and thereby denying the plaintiffs' prayer for an interlocutory injunction was entered on October 16,

1946 and the application for appeal herein is presented on the 29th day of October, 1946.

IV. Nature of the Case and Rulings of the Court

This action challenges the constitutional validity of the so-called Renegotiation Act of 1942, namely:

(1) Section 403 of the Sixth Supplemental Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942;

(2) Section 801 of the Revenue Act of 1942 (Public 753, 77th Congress), approved October 21, 1942; and

(3) Section 701 (b) of the Revenue Act of 1943 (Public 235, 78th Congress), enacted February 25, 1944.

The complaint seeks to have the above named statutes declared unconstitutional and seeks to enjoin the appellees in their individual, private capacity from purporting to act under and in pursuance of the aforesaid alleged unconstitutional statutes. The appellees have purported to act in pursuance of said statutes and claim that a "renegotiation" has been conducted between appellants and appellees. In pursuance of the purported "renegotiation" and of the aforesaid statutes, unilateral determinations were issued by the appellees against the appellants setting forth a claimed indebtedness against the appellants. Thereupon the appellees purported to act under the aforesaid statutes and issued "withholding orders" to customers of the appellants, directing and instructing the customers of the appellants not to pay sums due from the customer to the appellants, but instead to hold and pay those sums for the United States.

It was also alleged in the complaint that appellants do not have any contractual relationship with the United States nor do appellants have any privity of contract with the

United States. In the complaint the aforesaid statutes were claimed to be repugnant to the constitution:

Article I, Section 1.
Article I, Section 8, Clause 1.
Article III, Sections 1 and 2.
Article VI, Clause 2.
Fifth Amendment.
Seventh Amendment.
Tenth Amendment.

The appellants sought an interlocutory injunction and appellees filed a Motion to Dismiss and a Motion for Summary Judgment. The Three Judge Statutory Court acting in pursuance of Title 28, Section 380a, granted the appellees' Motion for Summary Judgment, and failed to issue an interlocutory injunction as prayed for by appellants.

The appellants append a copy of the opinion rendered by the Court on April 10, 1946, a copy of the order of May 6, 1946, and a copy of the orders of October 16, 1946.

V. Cases Believed to Sustain the Jurisdiction

The nature of the case and the rulings of the Court are believed to bring the case within the jurisdictional provisions relied upon and the following are cases believed to sustain the jurisdiction:

Hill, Administrator, v. *Hawes* (1944), 320 U. S. 520.
Wickard v. *Filburn* (1942) 317 U. S. 111.
Mulford v. *Smith* (1939), 307 U. S. 38.
Tennessee Electric Power Co. v. *Tennessee Valley Authority* (1939), 306 U. S. 118.
Sikes v. *Fox* (1937), 300 U. S. 82.
Philadelphia Co. v. *Stimson* (1912), 223 U. S. 605.

VI. Substantial Federal Questions

It is believed that there are substantial constitutional questions involved in the matter herein.

The enactments of April 28, 1942 and of October 21, 1942 purport to authorize the "Secretary" (or to whomever he delegates, re-delegates or sub-delegates and each such delegate may continue the process of redelegation contrary to Article I, Section 1 of the Constitution) to "renegotiate" contract prices "whenever in his opinion excessive profits have been realized, or are likely to be realized."

This "renegotiation" was defined: "the refixing by the Secretary of the Department of the contract price". Thus Congress has abdicated its power under Article I, Section 1, without any limitation, or pretense of rule, except the unfettered opinion of a recipient who has power to delegate, re-delegate and sub-delegate without any limitation and to permit the delegate to further make delegations without any limitation or restraint.

This abdication by Congress to the executive doesn't merely end by allowing the legislative power to be nullified, but the judicial power is ousted from its sphere and its function as provided by Article III, Sections 1 and 2. The elimination of the legislative function or its expression in a vague, uncertain and indefinite manner and the elimination of the judicial function is incompatible with constitutional government. The taking by the executive of property without compensation is contrary to the Fifth Amendment both from a substantive standpoint and a procedural standpoint.

The statutes ignore and eliminate all contract law. Retroactivity permeates the statutes rather than a prospective rule for future conduct. Vested rights are impaired by the statutes. The doctrine of supremacy of law is obliterated;

the concept of separation of powers is disregarded. An indebtedness is created by executive fiat and enforced without due process of law, but enforced beyond the realm of judicial power in an *ex parte* and summary manner.

In substance the statutes are taxing acts without adherence to constitutional limitations. The statutes are arbitrary and capricious without any administrative scheme or fair administrative procedure. The statutes allow a selection and election as to those within its purview and do not inform the citizen of his rights, duties, and liabilities. An invasion is made of the reserved power of the States and the concept of the Federal Government being one of delegated powers is ignored and violated, but all power is concentrated in the hands of the executive.

VII. Action of Court on Interlocutory Injunction

The Three Judge Statutory Court granted appellees' Motion for Summary Judgment by ruling that the case did not present a genuine issue as to any material fact and that appellants had a remedy in the Tax Court. The Court would not hear the appellants on their Motion for Interlocutory Injunction and by this the Court abused its discretion:

1. The presence of a further administrative proceeding in the Tax Court of the United States does not stop the appellees from issuing additional withholding orders or directives to the customers of the appellants. The appellees are taking money due to apellants from their customers without any finding by the Tax Court.

2. The failure to grant the interlocutory injunction permits the appellees to continue to take sums due to appellants from their customers on contracts between appellants and their customers without any legal process and without due process of law as provided in the Seventh Amendment.

3. The failure to grant the interlocutory injunction during the pendency of this litigation or in the alternative during the pendency of the case in the Tax Court permits the appellees to continue issuing withholding directives to the customers of appellants with the result that the withholding orders impair the appellants' working capital and permits the appellees purportedly acting under the claimed unconstitutional statutes to obliterate and erase the business of the appellants.

4. If it should finally be determined that the statutes or the withholding provisions are unconstitutional, then such determination made at such a time will not serve to restore to the appellants herein the property taken from them, the loss of business, and the loss of customers and in addition the appellants will not have open to them an avenue to indemnify them for the damages sustained.

5. The questions presented by the Motion for Interlocutory Injunction are grave and the injury to the appellants is certain and irreparable by the denial of the interlocutory injunction. If the interlocutory injunction had been granted to appellants, the injury to appellees would be inconsiderable even though a final decree should be rendered in their favor.

It is respectfully submitted that this Court has jurisdiction of this appeal under Section 380 (a) of Title 28 of the United States Code Annotated.

JOHN W. PIESTER,
PAUL B. ELCAN,
Counsel for Appellants.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action 26873

RAYMOND T. WADE, et al., *Plaintiffs*,

v.

HENRY L. STIMSON, et al., *Defendants*

Before Edgerton, Associate Justice, United States Court of Appeals, District of Columbia, and Bailey and Letts, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court.

BAILEY, J:

This is an action to prevent defendants from enforcing a claim arising under the Renegotiation Statutes and the Amendments thereto, the contention of the plaintiffs being that the statute is unconstitutional.

The Plaintiffs are partners doing business at two locations in Detroit, Michigan. Their business is the precision manufacture of tools, dies, etc., in accordance with the specifications of their customers, to be used in fabricating war materials to be sold to the United States. During 1944 plaintiffs entered into numerous contracts for the construction of these tools, etc. These contracts, however, were not directly with the United States and for the purposes of renegotiation the status of the plaintiffs is that of subcontractors only.

In September 1944 the Under Secretary of War determined that during the year 1942 the plaintiffs realized excessive profits in the sum of over $400,000.00 and directed a refund to the United States of this amount, less taxes. Upon the failure of the plaintiffs to make this refund, the government directed prime contractors, doing business with the Government, to withhold for the account of the United States sums otherwise payable to the plaintiffs.

The plaintiffs claim that the renegotiation laws are unconstitutional as applied to them; that in any event they were not subcontractors within the meaning of the Renegotiation Law, and that the question of whether or not they were subcontractors within the purview of the renegotiation statute is a judicial as well as a jurisdictional fact that must be decided by the court. Plaintiffs, nevertheless, have begun proceedings before the Court of Tax Appeals seeking *de novo* determinations as to whether and in what amount they have realized excess profits subject to recapture under the Renegotiation Act.

We think this case is governed by the case of *Edward Macauley, et al.*, v. *Waterman Steamship Corporation*, decided by the Supreme Court on March 26, 1946, in which the claim was made that the contracts involved in that case were not covered by the Renegotiation Act. In that case the Court said:

> "* * A contractor aggrieved by the Chairman's determination of excessive profits may have them redetermined in a 'de novo' proceeding before the Tax Court. Section 403(e)(1) of the Act provides that the Tax Court 'shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits . . .' Contrary to respondent's contention that this language limits the Tax Court's jurisdiction so as not to include the power to decide questions of coverage, we think the language shows that the Tax Court has such power. For a decision as to what are and are not negotiable contracts is an essential part in determining the amount of a contractor's excessive profits. The legislative history of the Renegotiation Act, however, shows that Congress intended the Tax Court to have exclusive jurisdiction to decide questions of fact and law, which latter include the issue raised here of whether the contracts in question are subject to the Act. In order to grant the injunction sought the District Court would have to decide this issue in the first instance. Whether it ever can do so or not, it cannot now decide questions of coverage when the administrative agencies authorized to do so have not

yet made their determination. Here, just as in the Myers case, the administrative process, far from being exhausted, had hardly begun. The District Court consequently was correct in holding that it lacked jurisdiction to act."

We are also of the opinion that this case is governed by the cases of *Mine Safety Appliances Co.* v. *James V. Forrestal*, 326 U. S. p. —, and *Aircraft & Diesel Equipment Corporation* v. *Maurice Hirach*, et al., C. A. 28999, recently decided by this court, there being an adequate remedy at law, and the administrative remedies not having been exhausted.

The motion of the defendants for a summary judgment, there being no material issues of fact, will be sustained.

(S.) Henry W. Edgerton,
(S.) Jennings Bailey,
(S.) F. Dickinson Letts.

April 10, 1946.

Filed May 6, 1946. Charles E. Stewart, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action 26,873

Raymond E. Wade, et al., *Plaintiffs*,

vs.

Henry L. Stimson, et al., *Defendants*

It is Ordered by the Court that the petition of the plaintiffs for a rehearing of the above-entitled cause and for leave to amend the complaint be and the same is hereby denied.

(S.) Henry W. Edgerton,
(S.) Jennings Bailey,
(S.) F. Dickinson Letts.

Filed Oct. 16, 1946. Charles E. Stewart, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26873

RAYMOND E. WADE, et al., *Plaintiffs*,

v.

HENRY L. STIMSON, et al., *Defendants*

Order Vacating and Setting Aside Order of May 6, 1946

Upon consideration of the plaintiffs' Motion to vacate and set aside the Order entered herein on the 6th day of May, 1946, it is, with the consent of the defendants, this 16th day of October, 1946.

Ordered, That the said Motion be, and the same is, hereby granted.

BY THE COURT:

(S.) HENRY W. EDGERTON,
Justice;

(S.) JENNINGS BAILEY,
Justice;

(S.) F. DICKINSON LETTS,
Justice.

I consent:

(S.) EDWARD H. HICKEY,
Special Assistant to the Attorney General of the United States,
Attorney for the Defendants.

Filed Oct. 16, 1946. Charles E. Stewart, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 26873

RAYMOND E. WADE, et al., *Plaintiffs*,

v.

HENRY L. STIMSON, et al., *Defendants*

It is Ordered by the Court that the petition of the plaintiffs for a rehearing of the above-entitled cause and for leave to amend the complaint be and the same is hereby denied.

(S.) HENRY W. EDGERTON,
Justice;

(S.) JENNINGS BAILEY,
Justice;

(S.) F. DICKINSON LETTS,
Justice.

Dated: October 16, 1946.

I consent:

(S.) EDWARD H. HICKEY,
Special Assistant to the Attorney General of the United States,
Attorney for the Defendants.